

Department of Permits and Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Baltimore County, Maryland

In the Matter of

Civil Citation No. 69863

Barry M. Mehta  
5551 Oakland Mills Road  
Columbia, MD 21045

5550 Baltimore National Pike

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on November 25, 2009 for a Hearing on a citation for violations under the Baltimore County Code (BCC) section 3-6-205, repeat offences; section 1-2-217 (B)(2)(C) \$500.00 per violation per day; section 35-2-301 (B681970), failure to obtain permit, failure to repair fire damaged units; section 21-7-301 (E682155), failure to obtain electrical permit-fire alarm; section 21-7-302, failure to request inspections, E691399; International Building Code (IBC) 2006 section 110.1, must file for change of use to occupy a portion of the building for assembly use (church gathering); section 21-7-301, must obtain permit for exit and emergency lighting as per Fire Department regulations on property known as 5550 Baltimore National Pike, 21207.

On October 20, 2009, pursuant to Baltimore County Code §3-6-205, Inspector James Garland issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1<sup>st</sup> class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$18,500.00 (eighteen thousand five hundred dollars).

The following persons appeared for the Hearing and testified: Barry Mehta, Respondent, Christine Garcia, Property Manager for Mr. Mehta and James Garland, Baltimore County Building Inspections inspector.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. Inspector James Garland testified that this Citation was issued without a prior Correction Notice pursuant to the Department's adopted criteria, under the "repeat offender" provision for a Respondent who has violated the same code within the year or consecutive years. BCC Section 3-6-205. This Citation was issued on October 20, 2009 for five code violations.

B.1. The first alleged violation is failure to obtain a permit to repair fire-damaged units within this mixed-use commercial and residential building. Inspector Garland testified that Respondent filed for a permit in November 2007 but submitted an incomplete application and never followed through to obtain the permit; the application was canceled because of the lapse of time. Respondent Mehta testified that he believes he met all obligations through various proceedings in court and agreements with Baltimore County in 2007 and 2008. Respondent Mehta testified that on February 14, 2008 after the building was condemned for code and permit issues there was a meeting with County officials and Respondent's lawyer, at which an agreement was reached to have electrical and plumbing inspections made, all violations corrected, and the condemnation lifted. He further testified that this was done, and argued that any prior violations should now be considered resolved. Respondent Mehta further testified that he obtained a Baltimore County Rental Housing License on August 5, 2008 for the residential units and that all required inspections were done to qualify for that License.

B.2. Review of the file shows that there was extensive written correspondence between Baltimore County officials and Respondent Mehta's attorney following the February 15, 2008 meeting. Correspondence included an emailed letter and attached summary report from Building Engineer Donald Brand, dated April 10, 2008, with a long list of items requiring correction including electrical, plumbing, and other code violations. The letter states that "pending a breach by Mr. Mehta, all outstanding code enforcement actions are merged into this agreement. If the requirements to be undertaken by Mr. Mehta in this agreement are satisfied, all such outstanding actions shall be dismissed." Additional email correspondence occurred in the following months of 2008 over unresolved issues. An email message from Building Engineer Brand to Respondent's attorney dated July 21, 2008 states that "the plumbing and electrical issues have apparently been satisfied.... Assuming Mr.

Harmon does not find any other code issue which would bar occupation of the base building (excluding the Pizza shop and former hair salon), Mr. Mehta should be able to use the building for those uses which have been previously approved through a Use and Occupancy Permit for the property save and excepting the area which had been damaged by fire and for which a building application has been received.” A letter from Building Engineer Brand to Respondent’s attorney dated July 24, 2008 notified him that the condemnation order in force on the building was lifted. The extensive documentation in the file does not support Respondent’s claim that all violations were corrected and resolved in 2008; the lifting of the condemnation order does not equate with this, as the County does not condemn properties just because of ordinary code or permit violations. The building permit for repair of fire-damaged units referred to by Mr. Brand’s July 21, 2008 email apparently was never obtained and properly executed with required inspections, even though the units were reconstructed, and this portion of the Citation will be enforced.

C.1. The second alleged violation is failure to obtain required electrical permits for a fire alarm system that was not completely installed and was not certified. Inspector Garland testified that a permit application was filed in November 2007 and the permit was issued on November 15, 2007, but the permit was cancelled before the work was completed. Respondent Mehta testified that his contractor obtained permit #E682155 as required and further testified that a final inspection was done on November 20, 2007. He provided a copy of the permit with the handwritten notation “conf #2106314 final 11/20/07.” Review of the file shows a letter dated January 16, 2008 from Timothy M. Hamby, President, T.H.E. Electric Co., Inc., to the County Building Engineer, stating that the building owner was not cooperating with requests for required certified drawings and requesting that the electrical permit #E682155 be terminated.

C.2. Review of the testimony and the file does not support Respondent’s position on this alleged violation; the evidence shows that a final inspection was never done, and further shows that the licensed electrical contractor who obtained permit #E682155 and was responsible for the work terminated the permit prior to completing the work and without obtaining a final inspection. Respondent is required by law to engage an electrician licensed by Baltimore County to do all electrical repair and installation work, pursuant to valid permits and with all required inspections. BCC Section 21-7-202, BCC Section 21-7-301. This portion of the Citation will be enforced.

D.1. The third alleged violation is failure to call for final inspections for permit #E691399. Inspector Garland testified that this permit was for electrical wiring in Unit #6, and further testified that he believes the permit was intended to cover all four of the interior units where the fire damage had occurred. The rough-in inspection was approved on June 27, 2008 but no final inspection was done. After being contacted by the Department, the responsible electrician, Milton Electric, requested that the permit be canceled. Review of the file shows a memo dated October 6, 2009 from Frank Coonan, for Milton Electric, stating, "Please cancel the above permit [#E691399]. Milton Electric Co. received a rough-in inspection on or about June 27, 2008 at 5550 Baltimore National Pike Unit 6. The owner Barry Mehta chose not to call us to complete the electrical work."

D.2. Review of the testimony and evidence shows that Respondent failed to complete the electrical work covered by permit #E691399. The electrician who obtained the permit did not complete the work and canceled the permit. Respondent is required by law to engage an electrician licensed by Baltimore County to do all electrical repair and installation work, pursuant to valid permits and with all required inspections. BCC Section 21-7-202, BCC Section 21-7-301. This portion of the Citation will be enforced.

E.1. The fourth alleged violation is failure to file for change of use to occupy a portion of the building for assembly use (church gathering). Respondent Mehta testified that he believes he has a use and occupancy permit for a church to use the space, from 1990. He provided a site plan to the County at the request of Inspector Charles Krick. He testified that he has leased space to a church since 2001, and submitted a copy of that lease. He further testified that he thinks his tenant, the church, obtained a use and occupancy permit, and that he thinks that is the tenant's responsibility.

E.2. Review of the file and the testimony indicates that Respondent does not have valid use and occupancy permits for all of the uses currently in place in this mixed-use commercial building, including specifically a permit for assembly use by a church. Whether or not Respondent delegates that responsibility to a tenant through a lease or other contract is immaterial; as the property owner, Respondent is obliged to ensure that code and permit requirements are met, and is responsible for this violation. Respondent was advised of this requirement in previous correspondence that is in the file, including correspondence from Building Engineer Brand to Respondent's attorney ("The attached summary does not adequately address the issue of the change of use from commercial to

residential either in whole or part. If a change in use was granted by the County, please so advise and provide documentation.” Email message, April 10, 2008.) (“...I received a call from a potential renter that she was advised by Mr. Mehta that space in the building will be available to rent shortly. She was looking for space for a church. A church use would clearly require a change in use – public assembly, an A-3 classification in the IBC.” Email message, June 19, 2008.) Respondent is required by law to have a valid use and occupancy permit for all uses of this commercial and residential building, including assembly use by a church, and this Hearing Officer is unable to find any such permit in the department’s file. This portion of the Citation will be enforced.

F.1. The fifth alleged violation is for failure to obtain required permits for exit and emergency lighting to comply with Fire Department regulations. Inspector Garland testified that the Fire Department has been actively working on this site and shut the building down for ten days in October. He further testified that the Fire Department has ordered that emergency egress must be opened; a UL-certified fire alarm system is required; a sprinkler system is required; emergency lighting is required; and Respondent must obtain an assembly certificate for the church use. Respondent Mehta testified that the Fire Department has inspected the building and further testified that the emergency lights were approved in 1987.

F.2. This alleged violation is less clear than the other electrical permit violations discussed above. The file does not appear to contain documentation of Fire Department inspection or documentation showing that emergency lights have been installed or repaired without permits. This portion of the Citation will be DISMISSED.

G. This Citation will be enforced for the four code violations found and described above. Review of the entire case and consideration of Respondent’s argument that he has in part been prevented from obtaining requested permits due to unresolved issues, and additional consideration of Respondent’s argument that he reasonably believed that some or all of these code enforcement issues had been resolved when the building condemnation was lifted in 2008, leads this Hearing Officer to conclude that the most appropriate resolution is to require Respondent to apply for and obtain a valid change of use and occupancy certificate for a mixed use building, in order to account for all of the various tenants and uses that he is accommodating in this commercial building and to ensure that all safety and building code issues are properly resolved.

H. It is clear from the file that Respondent has simply added tenants and uses from time to time without obtaining the required change of use and occupancy certificates, and as a result various County agencies have responded piecemeal to complaints and issues as they arose or as they came to the attention of County officials. Going through the normal process will allow County agencies to assist Respondent in achieving full compliance with all normal commercial property requirements including all remaining fire safety and building code issues such as the electrical system permit issues raised by this Citation. Because compliance is the goal of code enforcement, the civil penalty will be rescinded if Respondent complies with this Final Order and corrects the violations within the time provided below.

I. This Order is not intended to prescribe any particular use or tenancy of the building; the property owner can determine that use, within applicable zoning parameters, but this Order is intended to require Respondent to decide what uses and tenancies he wishes to have in effect on March 22, 2010, and to require him to obtain a valid change of use and occupancy permit by that date for all such actual uses and tenancies.

J. Respondent is further advised that this Order does not in any way affect or diminish the authority of the Building Engineer, the Fire Department, or other County officials or agencies to enforce applicable codes or regulations, or to exert their lawful authority over the occupancy of this property, during the period between the issuance of this Final Order and March 22, 2010 or thereafter.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$15,000.00 (fifteen thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED by \$5,000.00 (five thousand dollars) if Respondent by February 1, 2010 files an application, with proposed site plan and all other required documentation, for a change of use and occupancy certificate for all tenancies and uses of this property that Respondent proposes to have as of March 22, 2010.

If the required application is not filed by February 1, 2010, \$5,000.00 (five thousand dollars) of the civil penalty shall be enforced and billed to the Respondent.

IT IS FURTHER ORDERED that the civil penalty will be REDUCED by \$10,000.00 (ten thousand dollars) if Respondent by March 22, 2010 obtains the required change of use and occupancy certificate to permit all tenancies and uses of the building that are in place on March 22, 2010.

If the required certificate is not obtained by March 22, 2010 and the building is occupied, \$10,000.00 (ten thousand dollars) of the civil penalty shall be enforced and billed to the Respondent.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 4<sup>th</sup> day of December 2009.

Signed: ORIGINAL SIGNED  
Margaret Z. Ferguson  
Baltimore County Hearing Officer

**NOTICE TO RESPONDENT:** The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

